

## **EXHIBIT 4**

IN THE UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF MASSACHUSETTS

COLLEEN O'DONNELL,	)	
	)	
Plaintiff,	)	
-v-	)	CIVIL ACTION NO.
	)	04-40190-FDS
ALBERTO R. GONZALES,	)	
Attorney General,	)	
U.S. Department of Justice,	)	
	)	
Defendant.	)	

THE ORAL DEPOSITION OF DAVID L. WINN,  
held pursuant to Notice, and the applicable provisions of  
the Federal Rules of Civil Procedure, before Marilyn  
Franklin, a Court Reporter and Notary Public, within and for  
the Commonwealth of Massachusetts, at FMC Devens,  
Ayer, Massachusetts, Massachusetts, on Thursday, September  
14, 2005, commencing at 10:04 a.m.

**APEX Reporting**  
(617) 426-3077

**PRESENT:**

On Behalf of the Plaintiff:

DAWN D. McDONALD, ESQ.  
Cooley, Shrair P.C.  
1380 Main Street, Fifth Floor  
Springfield, MA 01103  
(413) 735-0750

On Behalf of the Defendant:

DAMIAN W. WILMOT, ESQ.  
Assistant U.S. Attorney  
U.S. Attorney's Office  
1 Courthouse Way, Suite 9200  
Boston, MA 02210  
(617) 748-3100

KELLY L. McDONALD, ESQ.  
Assistant General Counsel  
Federal Bureau of Prisons

ALSO PRESENT:

Colleen O'Donnell

**APEX Reporting**  
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[1] conducted on David Reynoso?  
 [2] A Yes I have.  
 [3] Q And do you recall what his background check  
 [4] revealed?  
 [5] A I think there was an issue of just debts.  
 [6] Q Anything else?  
 [7] A Not that I recall.  
 [8] Q Did it reveal an arrest for assault and battery [9] with a dangerous weapon?  
 [10] A Not that I recall.  
 [11] Q Have you ever seen David Reynoso's application for  
 [12] employment?  
 [13] A At one time, I reviewed it. The date of review, I  
 [14] couldn't tell you.  
 [15] (Exhibit No. 1 marked for [16] identification.)  
 [17] BY MS. MCDONALD:  
 [18] Q Okay. I am going to show you this document? Do  
 [19] you recognize this document?  
 [20] A Do I recognize it?  
 [21] Q Yes.  
 [22] A No I don't.  
 [23] Q You've never seen that document before?  
 [24] A I may have but I don't remember it.  
 [25] Q Do you know what this document is?

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[1] A It's a document from my understanding, I'm not an  
 [2] expert at it, would give me information either that the  
 [3] investigation has been cleared or not cleared.  
 [4] Q Okay. And do you see the date on the bottom. [5] Would  
 that represent when you received that document.  
 [6] MR. WILMOT: Objection.  
 [7] THE WITNESS: I wasn't here at that time.  
 [8] (Exhibit No. 2 marked for [9] identification.)  
 [10] BY MS. MCDONALD:  
 [11] Q Okay. I am going to show you another document.  
 [12] Can you describe that document?  
 [13] A It's a reinvestigation and it closed out the  
 [14] investigation on 7-30-04.  
 [15] Q And what is the date on that document?  
 [16] A March 31, 2005.  
 [17] Q Do you know what investigation -?  
 [18] A Excuse me, I can't tell if it's March 3rd or March [19] 31st.  
 [20] Q Okay. Do you know what investigation that  
 [21] document is referring to?  
 [22] A No.  
 [23] Q What would be a reason that another, an additional  
 [24] background check would be conducted on an employee once  
 he's [25] already hired?

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[1] A They do a five year background check.  
 [2] Q And that's standard for all employees?  
 [3] A That's correct.  
 [4] Q So it's possible that was the five year background  
 [5] check that you don't recall?  
 [6] A That's possible.  
 [7] (Exhibit No. 3 marked for [8] identification.)  
 [9] BY MS. MCDONALD:  
 [10] Q Okay. I am going to show you another document and  
 [11] ask if you can take a look at that and state for the record  
 [12] what that document is?  
 [13] A I have no idea.  
 [14] Q You don't know what this document is?  
 [15] A No.  
 [16] Q Now you testified a few moments ago that you had  
 [17] reviewed Mr. Reynoso's application for employment at some  
 [18] point in time, I believe, was your testimony.  
 [19] Is this not his application for employment?  
 [20] MR. WILMOT: Objection. You can answer.  
 [21] THE WITNESS: Well, I reviewed his, you're asking [22] me  
 if I know what that form is and the answer is no, I don't [23] know  
 what that form is.  
 [24] Is it part of the background, it could be, but I'm [25] not  
 certain.

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[1] BY MS. MCDONALD:  
 [2] Q Okay. You've never seen this form before?  
 [3] A Not that I recall.  
 [4] Q I am going to refer you to paragraph 8. If you [5] could  
 read what paragraph states for the record.  
 [6] A Paragraph 8?  
 [7] Q Yes.  
 [8] A "During the last ten years have you ever been  
 [9] convicted, imprisoned, been on probation or been on parole?  
 [10] Includes felonies, firearms, explosive violations,  
 [11] misdemeanors and all other offenses. If you answered yes to  
 [12] Item 15, you need to provide the date, explanation of the  
 [13] violation and place of occurrence, and names and addresses  
 [14] of the police department or court involved."  
 [15] MR. WILMOT: For the record, I just want to state [16] the  
 right side of this document is support copy, I guess. [17] So, it's  
 hard to read anything in the right margin of the [18] document.  
 [19] MS. MCDONALD: Yeah. And I won't ask him anything  
 [20] about the right margin.  
 [21] MR. WILMOT: All right.  
 [22] MS. MCDONALD: That's how the copy was that I got.  
 [23] BY MS. MCDONALD:  
 [24] Q So this is, paragraph 8 states that any yes [25] answers  
 should be explained in Item 15. So I am going to

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[1] refer you to Item 15 on the second page and first let me ask  
 [2] you, does that document if I represent to you that document  
 [3] is the declaration for federal employment for David Reynoso,  
 [4] would you agree with that?  
 [5] A Repeat the question.  
 [6] Q If I represent to you that document is the [7] declaration  
 for federal employment filled out by Mr. David [8] Reynoso, would  
 you agree with that statement?  
 [9] A Yes.  
 [10] Q And under Item 15, does he explain a situation  
 [11] which was asked about in paragraph 8?  
 [12] MR. WILMOT: Objection. You can answer.  
 [13] THE WITNESS: YES.  
 [14] BY MS. MCDONALD:  
 [15] Q And what does it state there?  
 [16] A Arrested for assault and battery on May 3, 1991.  
 [17] Case was brought before a judge on October of 1991. He  
 [18] continued the case without a finding for one year. I was  
 [19] ordered to report to probation, probation officer, where she  
 [20] instructed me to report to her once a month. I was also  
 [21] instructed to attend emergency, or I think it's emergency  
 [22] classes, merge classes. When I went before the judge, he  
 [23] later dropped all charges from the case and was dismissed.  
 [24] The court was Lynn District Court, Essex County.  
 [25] Q Were you ever aware of these facts as are stated

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[1] in this document?  
 [2] A Was I aware of those?  
 [3] Q Yes.  
 [4] A Not that I recall. No.  
 [5] Q Okay. Now I understand that in May of 1998, you [6] were  
 not the Warden at this facility? Is that correct?  
 [7] A Correct.  
 [8] Q But let me ask you a hypothetical question. Were [9] an  
 individual to apply for employment, and state these facts [10] as  
 they are stated in this document, is this an individual [11] that you  
 would hire for employment at this facility?  
 [12] A Well, number one, I don't know the rules or  
 [13] guidelines on a continuation without a finding. From my  
 [14] understanding continuation without a finding doesn't mean  
 [15] that he was found guilty or innocent.  
 [16] That's a hypothetical question. I don't know what [17] the  
 guidelines are, I would have to refer -  
 [18] Q So you would make a phone call on something like  
 [19] this?  
 [20] A I would refer back to my Human Resource manager  
 [21] for advice.  
 [22] Q Okay. And you testified earlier that there may be  
 [23] circumstances where you would request a waiver from I  
 [24] believe you said, the Central Office.  
 [25] A Regional Director.

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[1] Q Regional Director. Is this possibly a [2] circumstance that  
 you would have requested a waiver?  
 [3] MR. WILMOT: Objection. You can answer.  
 [4] THE WITNESS: I don't know. I've never had that [5] brought  
 before me as a warden on something like that.  
 [6] BY MS. MCDONALD:  
 [7] Q Okay. In your many number of years as a warden [8] and  
 thirty-two years working for the Bureau of Prisons, can [9] you  
 state whether this is something that you may call for a [10] waiver  
 on?  
 [11] A If it wasn't, if it was a continuation of finding, [12] and  
 there wasn't, he wasn't, that person wasn't found guilty [13] or  
 innocent, to be honest with you, I don't know if I would [14] or I  
 wouldn't.  
 [15] Q Okay.  
 [16] A I may have. I mean, I may -  
 [17] Q You would have to look into the facts and  
 [18] circumstances?  
 [19] A Pretty much, yes.  
 [20] Q Okay. When did you first become aware of the [21] April  
 8, 2002 incident?  
 [22] A On that particular day, I was sitting in my [23] office.  
 Approximately 11 a.m. or 11, between 11 a.m. and [24] 11:30, I  
 received a call from Steve Gagnon indicated that [25] there had  
 been an incident involving two staff members down

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[1] at Mirror Lake and that Ms. O'Donnell was coming to my  
 [2] office.  
 [3] Q And when she got to your office what did she say [4] to  
 you?  
 [5] A As she was coming up to my office, I called [6] Ms. Lord,  
 Human Resource Manager, to come in and when [7] Ms. O'Donnell  
 got there she advised me of an alleged assault [8] that involved  
 another staff person. And I asked who that [9] staff person was,  
 and she mentioned Mr. Reynoso.  
 [10] She said she didn't know what to do. I asked her [11] if she  
 needed medical attention and she stated no, I don't [12] need  
 medical attention. I asked her what occurred and she [13] advised  
 me that her and Mr. Reynoso got in an argument and [14] that  
 Mr. Reynoso allegedly assaulted her.  
 [15] She also mentioned and I'm sure I asked a couple  
 [16] questions but I don't recall what I asked, I asked her, well  
 [17] she advised me that there was a policeman in their proximity  
 [18] and I, I would also bet my money, that I asked her if she  
 [19] went to that police officer for assistance and she didn't  
 [20] request assistance from that police officer.  
 [21] I know I asked her on a couple of occasions, are [22] you set  
 you don't want to go down to the medical to get [23] assessed of  
 any injuries and she said no.  
 [24] And then I advised her, she asked me what to do. [25] I said,  
 well, you need to file a police report. You need to



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[1] go down to the State Police and file a police report because  
 [2] the subject came up whether it was on duty, whether it was  
 [3] on government property or not. I don't know if I brought it  
 [4] up, I can't remember if Ms.O'Donnell brought it up. But it  
 [5] came up that it was off government property and it was  
 [6] during both individual's lunch break.  
 [7] So at that time, I said, I think I gave her admin [8] leave for the  
 day. I had a staff member, I asked her if she [9] wanted a staff  
 member to go with her to report it and I [10] don't know if she said  
 yes or no, I can't remember that on [11] that day.  
 [12] Later on, I found that a staff member did go with [13] her. She  
 did report it.  
 [14] I notified my Regional Director of the incident [15] because it  
 dealt with an alleged assault. Staff on staff. [16] I gave him the  
 information that was provided to me by [17] Ms.O'Donnell.  
 [18] I did request that both staff persons be placed on [19] home  
 duty status.  
 [20] Q Okay. Go ahead.  
 [21] A The Regional Director at that time stated no, this  
 [22] would not qualify for home duty status case.  
 [23] Q Can you, let me interrupt you. Can you explain [24] what  
 home duty status is?  
 [25] A Home duty status would be that they would be

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[1] placed at home during their scheduled shift with pay or  
 [2] without pay and that would be their duty station.  
 [3] Q So that's different than admin leave?  
 [4] A Yes.  
 [5] Q Okay. Go ahead, you can continue.  
 [6] A Okay. After I notified my Regional Director, then [7] I  
 conducted a work place violence committee-  
 [8] Q You conducted it or you asked somebody to-?  
 [9] A Well, I didn't conduct it. I gathered a committee [10] up  
 [11] Q Okay.  
 [12] A By policy in accordance with Bureau policy to [13] advise  
 me whether workplace violence existed or not. I [14] gathered the  
 staff that was outlined by policy and I may [15] have added a staff  
 member or two to that policy.  
 [16] I presented the chairperson, who was David Porter [17] and  
 the people in the committee, the committee members, what [18] I  
 was told by Ms.O'Donnell and that's all I did and I told [19] them to  
 report back to me when they come up for some  
 [20] recommendations or their review.  
 [21] I mean, that day and then I guess they met the [22] next  
 morning. They reviewed the information they had that [23] was  
 provided by me, by Ms.O'Donnell and they provided me a  
 [24] report.  
 [25] Q Okay. Did you, actually let me find that report.

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[1] (Pause)  
 [2] MS. MCDONALD: Let me show you this document. [3] Take  
 a look at that.  
 [4] (Exhibit No. 4 marked for [5] identification.)  
 [6] THE WITNESS: Okay.  
 [7] BY MS. MCDONALD:  
 [8] Q Do you recognize that document?  
 [9] A Yes I do.  
 [10] Q And what it is?  
 [11] A It's the Workplace Violence Committee Meeting  
 [12] Report to me.  
 [13] Q And I think you mentioned they met a couple of  
 [14] times. Do you know whether this is the first report or the  
 [15] second report?  
 [16] MR. WILMOT: Objection. You can answer.  
 [17] THE WITNESS: I'm not sure if it was the first or [18] second  
 time they met. They met in the afternoon and the [19] morning.  
 [20] BY MS. MCDONALD:  
 [21] Okay. And down towards the bottom of the page, [22] the  
 Committee Recommendations.  
 [23] A Yes.  
 [24] Q It states that the committee decided to reconvene [25] on  
 Tuesday, April 9th, at 9 a.m. to further consider the

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[1] incident based on how the Mass State Police responded.  
 [2] Do you see where it says that?  
 [3] A Yes.  
 [4] Q Is that the second meeting to which you were [5] referring  
 to?  
 [6] A This document, I don't know if they wrote them up [7] the  
 same day, this must be the first time they met at.  
 [8] Q Would it be safe to say that based on that [9] committee  
 recommendations in this document, that at this [10] point in time,  
 Mr.Reynoso had not yet been arrested?  
 [11] MR. WILMOT: Objection. You can answer.  
 [12] THE WITNESS: I don't know if he had been arrested [13] or  
 not at that time.  
 [14] (Exhibit No. 5 marked for [15] identification.)  
 [16] BY MS. MCDONALD:  
 [17] Q Okay. Let me show you this one.  
 [18] A Okay.  
 [19] Q Do you recognize that document?  
 [20] A Yes I do.  
 [21] Q And what is that document?  
 [22] A Again, it is a Workplace Violence Committee [23] Meeting  
 Minutes to me.  
 [24] Q And what is the date?  
 [25] A April 8th.

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- [1] Q 2002?
- [2] A Correct.
- [3] Q And that's the same date as the previous report,
- [4] Exhibit 4 is it? Yeah.
- [5] Both those documents are dated the same?
- [6] A Correct.
- [7] Q They are a little bit different though. Let me [8] call your attention to the second paragraph of Exhibit 5. [9] Where it says the committee reconvenes.
- [10] MR. WILMOT: You mean Exhibit 4?
- [11] MS. MCDONALD: I think it's 5.
- [12] MR. WILMOT: We have it as 4.
- [13] MS. MCDONALD: Right here. Oh, Okay. Sorry.
- [14] MR. WILMOT: That's all right.
- [15] THE WITNESS: I'm sorry. What was the question?
- [16] BY MS. MCDONALD:
- [17] Q The second paragraph states that the committee
- [18] reconvened on Tuesday, April 2nd [sic] and they were
- [19] informed that Mr.Reynoso was arrested on April 8th.
- [20] Do you see that?
- [21] A Yes.
- [22] Q And down on committee findings, it states that the
- [23] committee does not believe this met the definition of
- [24] workplace violence.
- [25] Do you see that?

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- [1] A Yes.
- [2] Q Do you know why they came to that conclusion?
- [3] A No.
- [4] Q And under committee recommendations, can you read
- [5] paragraph one?
- [6] A Which document?
- [7] Q Exhibit 4.
- [8] A Can I read it?
- [9] Q Yes. For the record.
- [10] A Committee was advised that since the charge
- [11] against Mr.Reynoso is a state felony, he would have to be
- [12] placed on indefinite suspension until the charges are
- [13] resolved.
- [14] Q Did you accept that recommendation?
- [15] A No.
- [16] Q Why?
- [17] A Because prior to this, I had already talked to the
- [18] Regional Director and advised him of the incident and he
- [19] advised me that he, Mr.Reynoso could not be placed on
- [20] home [20] duty status.
- [21] Q Okay. But that doesn't say home duty status, does
- [22] it?
- [23] A No it doesn't.
- [24] Q It says indefinite suspension.
- [25] A Indefinite suspension in my opinion, means the

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- [1] same thing as home duty status. I could not put him at
- [2] home. That's my definition of both of them. They're the
- [3] same.
- [4] Q After the Workplace Violence, did they have any [5] further functions? The Workplace Violence Committee. Did [6] they do, have any other responsibilities, once they gave you [7] that report?
- [8] A No.
- [9] Q They just gave you the recommendations and that's
- [10] the end of their job duties, I will call it?
- [11] A Correct.
- [12] Q Okay. And what else did you with regard to this
- [13] incident?
- [14] Did you order an investigation?
- [15] A Yes I did.
- [16] Q And why don't you explain to me the process you
- [17] took?
- [18] A Either that day or the next day, I reported the
- [19] incident to Central Office to open up an investigation of an
- [20] alleged assault on staff.
- [21] I think it was the next day that I also late in [22] the afternoon, got a restraining order which was included as [23] part of the investigation.
- [24] Q Who did you get the restraining order from?
- [25] A I don't recall.

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- [1] Q Okay. And who was conducting the investigation?
- [2] A At that time?
- [3] Q Yes.
- [4] A There was no investigation being conducted.
- [5] Q Oh, okay.
- [6] A It was referred for investigation.
- [7] Q Okay.
- [8] A To Central Office, Office of Internal Affairs.
- [9] Q So nobody approached Mr.Reynoso and asked him for
- [10] his side of the story at this point in time?
- [11] A No.
- [12] Q And that's standard procedure?
- [13] A It's standard procedures, I follow that procedure [14] until an investigator would discuss the case and take [15] affidavits and an investigation would actually be initiated.
- [16] Q So do you recall when the investigation was [17] actually initiated?
- [18] A That, to the best of my recollection, it would be [19] after the disposition of the court case was finalized in [20] January of 2003.
- [21] Q So until that happened, until the beginning of the
- [22] investigation which I understand you don't recall, but it
- [23] could have been months before that investigation was begun?
- [24] A That's correct.
- [25] Q Okay. And so between April 8 of 2002 and the

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[1] beginning of the investigation, you don't really have to,  
 [2] you're not obligated or required to do anything about  
 [3] Ms.O'Donnell's allegations?  
 [4] MR. WILMOT: Objection. You can answer.  
 [5] THE WITNESS: I did several things to her [6] allegations. I held a Workplace Violence Committee. I [7] referred it by policy in a bureaucratic policy to the Office [8] of Internal Affairs.  
 [9] Once I referred that case to the Office of [10] Internal Affairs, it's not in my hands, to do an [11] investigation. It's in the Office of Internal Affairs to do [12] the investigation.  
 [13] BY MS. MCDONALD:  
 [14] Q Did you, correct me if I'm wrong? Did you testify  
 [15] earlier that Darren Brown was in the Office of Internal  
 [16] Affairs?  
 [17] A He's, he's in the Office, he's a special [18] investigation, special investigation agent. He's not in the [19] Office of Internal Affairs. Office of Internal Affairs is a [20] central office.  
 [21] Q Okay. Okay. When you received the restraining  
 [22] order, what did you do about that?  
 [23] A That, once I received the restraining order [24] obviously I had to act on the restraining order which [25] indicated to me that Mr.Reynoso could continue working.

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[1] However, there would have to be fifty yard difference  
 [2] between Ms.O'Donnell and Mr.Reynoso.  
 [3] So at that time, I think Mr.Reynoso was on leave [4] and Ms.O'Donnell, if I remember correctly, gave her admin [5] leave for a period of time.  
 [6] Then I decided to ensure staff safety not only for  
 [7] Ms.O'Donnell and for Mr.Reynoso, and still make it as  
 [8] minimum disruptive to both employees. I changed schedules  
 [9] when they returned to work.  
 [10] Q And you said Mr.Reynoso was on leave also?  
 [11] A He could have been on days off or leave, I'm not  
 [12] certain?  
 [13] Q You don't recall whether you granted him  
 [14] administrative leave?  
 [15] A I may have granted both of them administrative  
 [16] leave.  
 [17] Q How did you change their schedules?  
 [18] A Well based upon the restraining order, my concern  
 [19] was to make sure both employees, to the best of my ability,  
 [20] to make both employees separate working areas to ensure  
 [21] that [22] they did not run into each other and that I could abide by [22] the restraining order.  
 [23] Again, at that time, prior to that, the Union had [24] come to me and requested to me that if any employee would [25] get some kind of disciplinary action while on Workman's

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[1] Comp, that I would try to maintain their schedules as best I  
 [2] could.  
 [3] Okay, keeping that in mind, the best I could do, [4] they're both bargaining unit employees, or excuse me one is,  
 [5] Ms.O'Donnell, Mr.Reynoso is not a bargaining unit  
 [6] employee, the best I could do was to change a half hour of  
 [7] her schedule.  
 [8] And I changed MR. Reynoso's shift from day shift [9] to night shift and I stipulated in my letter that they would [10] have to once their shift ended, they could, they would have [11] to leave within the thirty minutes period of time so they [12] wouldn't run into one another.  
 [13] Q And did you make these changes right away after  
 [14] the incident or was there some lapse in period of time?  
 [15] A There may have been three or four or five days. [16] It all depends on--  
 [17] Q Okay. But just a few days?  
 [18] A I would say yes.  
 [19] MS. MCDONALD: Okay. Unfortunately, I've got all [20] my exhibits out of order.  
 [21] (Exhibit No. 8 marked for [22] identification.)  
 [23] BY MS. MCDONALD:  
 [24] Q But let me show you Exhibit 8. Do you recognize [25] that document?

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[1] A Yes, yes, I do.  
 [2] Q And what is that document?  
 [3] A It's a restraining order issued by Malden District [4] Court.  
 [5] Q And was that the order obtained by Ms.O'Donnell [6] for protection from David Reynoso?  
 [7] A That I don't know. I don't know. My, I don't [8] know if she got it or she gave it to me. I don't know.  
 [9] Q But this document is concerning Ms.O'Donnell and  
 [10] David Reynoso?  
 [11] A Correct.  
 [12] Q Correct?  
 [13] A Correct.  
 [14] Q And you already mentioned that they had to stay, I  
 [15] believe it was fifty yards from each other or Mr.Reynoso  
 [16] had to stay fifty yards away from Ms.O'Donnell, correct?  
 [17] A That is correct.  
 [18] Q And were there any other restrictions placed on  
 [19] Mr.Reynoso?  
 [20] A There was a restriction that he couldn't carry a  
 [21] firearm.  
 [22] Q And what is the date on that document? I believe [23] it's on the second page.  
 [24] A Date of order was April 9, 2002.  
 [25] Q And was there a date that the order expires?



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- [1] A Expiration date of order was April 23, 2002. If [2] I'm reading it correctly.
- [3] Q Does it state on there that the order was extended [4] at any point?
- [5] A Next hearing date was April 23, 2002. Date of, [6] yeah, there was an expiration date. They extended it, April [7] 23, 2003. With a hearing date of April 23, 2003. If I'm [8] reading this correctly, okay.
- [9] Q And without looking at that document, do you [10] recall whether the order was extended beyond April 23, 2003?
- [11] A I extended their separation until, I can't [12] remember if the date was April 23, April 27, I extended it [13] until the probation period ended for Mr. Reynoso.
- [14] Q The probation period set by the Court?
- [15] A Right.
- [16] Q Okay.
- [17] A Because I think that restraining order was still [18] in effect. In fact, there were many restraining orders that [19] I received. But I can't recall every one of them.
- [20] Q I understand. You can't recall the dates, but [21] you--
- [22] A That's pretty much
- [23] Q You recollect the order was extended a couple of
- [24] times?
- [25] A Correct.

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- [1] Q And do you recall whether the order was extended [2] into 2004?
- [3] A I, I don't know.
- [4] Q Okay. Let's go back to the investigation.
- [5] A Okay.
- [6] MS. MCDONALD: Let me show you Exhibit 6. And I
- [7] would ask you to take a look at that.
- [8] (Exhibit No. 6 marked for [9] identification.)
- [10] (Pause)
- [11] BY MS. MCDONALD:
- [12] Q Do you recognize that document?
- [13] A No this is an Office of Internal Affairs' [14] document.
- [15] Q Have you ever seen that document?
- [16] A Not that I recall.
- [17] (Exhibit No. 7 marked for [18] identification.)
- [19] MS. MCDONALD: Okay. Let me show you Exhibit 7.
- [20] (Pause)
- [21] THE WITNESS: Yes.
- [22] BY MS. MCDONALD:
- [23] Q Have you ever, first of all, what is that [24] document?
- [25] A It's an OIA, Office of Internal Affairs

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- [1] Investigative Report Executive Staff Summary that outlines
- [2] the case and provides information regarding the case.
- [3] Q And is this the document that you received?
- [4] A Yes I did.
- [5] Q And did you review this document in determining [6] what discipline may be appropriate for Officer Reynoso?
- [7] A Yes.
- [8] Q And were the allegations of off duty misconduct
- [9] sustained?
- [10] A Yes they were.
- [11] Q I have a question. What is, for the record, what [12] is the date on this report?
- [13] A The dated report is March 26, 2003. That doesn't
- [14] necessarily mean that I received it on that date but that is
- [15] the date of this report.
- [16] Q So essentially the investigation was completed in
- [17] March of 2003?
- [18] A Correct.
- [19] MS. MCDONALD: I am going to show you Exhibit 9
- [20] and ask you to look at that.
- [21] (Exhibit No. 9 marked for [22] identification.)
- [23] MS. MCDONALD: I'm all out of order.
- [24] THE WITNESS: Okay.
- [25] BY MS. MCDONALD:

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- [1] Q Do you recognize that document?
- [2] A Yes I do.
- [3] Q And what is it?
- [4] A It's a letter of proposal to Officer Reynoso for a
- [5] suspension of thirty days for off duty misconduct.
- [6] Q And who drafted that this document?
- [7] A It would be either done by the Captain or the [8] Human Resource Department.
- [9] Q The document is signed by Michael Bollinger,
- [10] correct?
- [11] A Correct.
- [12] Q And it's also signed as being received by Officer
- [13] Reynoso?
- [14] A Correct.
- [15] Q And what is the date on the document?
- [16] A That Mr. Reynoso signed or--?
- [17] Q The date it was drafted?
- [18] A June 4th.
- [19] MR. WILMOT: Objection.
- [20] BY MS. MCDONALD:
- [21] Q And now did you meet with Officer Reynoso prior to
- [22] issuing him discipline?
- [23] A I'm sure I met him on several occasions.
- [24] Q In regard to this incident?
- [25] A Correct.

BSA

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XMAX(16/16)

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[1] A Do you want this back?  
 [2] Q No, you can hang on to it.  
 [3] A Okay. I've got a couple of them here. Okay, go [4] ahead.  
 [5] Q Whether at the time that you met with Mr. Reynoso [6] and were considering what discipline you should give him, do [7] you recall whether he had any prior discipline?  
 [8] A At that time that I met with him while he was [9] giving me his response?  
 [10] Q Or anywhere in the time that you had received the [11] investigative report and you were trying to make a [12] determination as to what discipline was warranted in that [13] time period?  
 [14] A If I remember correctly, he had a DUI.  
 [15] Q And was that a recent occurrence close in time to [16] --?  
 [17] A To, I'm not certain.  
 [18] Q Okay. And I believed you testified earlier that [19] would be a Category Three --?  
 [20] A Correct.  
 [21] Q Offense?  
 [22] A Correct. A DUI.  
 [23] Q A DUI would be. And I believe you testified that [24] an assault between staff members, initially, this particular [25] assault was classified as a Category One or a Category Two?

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[1] A Actually, I don't know what Central Office [2] categorized it. I set it up and they categorized it.  
 [3] Did they categorize it as a one or two? I never [4] got a call back. I'm waiting on what they're categorizing [5] and who's going to do the investigation.  
 [6] Q Okay. So, was it ever downgraded to a Category [7] Three or the category never came up again?  
 [8] A Actually, the category never came up again but [9] they did authorize a local investigation.  
 [10] Q Okay. But they could do that even for a Category [11] One or a Category Two? They could authorize a local--?  
 [12] A They could.  
 [13] Q Okay.  
 [14] A They could.  
 [15] Q Let me refer you in Exhibit 10 to the second to [16] the last paragraph. Do you see where it says Warden Winn [17] told Mr. Reynoso he may have to make some decisions that [18] could affect him, such as changing his work hours?  
 [19] A Mm-hmm.  
 [20] Q What is the date on this document?  
 [21] A June 17, 2003.  
 [22] Q Hadn't you already changed Mr. Reynoso's work [23] hours by this point in time?  
 [24] A I changed work hours for both employees on [25] numerous occasions through this whole process.

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[1] Q Okay. So there wasn't just one, we're just [2] talking about Mr. Reynoso.  
 [3] A Okay.  
 [4] Q I believe you testified that you had changed his [5] work hours within five days of the incident or so?  
 [6] A Correct.  
 [7] Q And that was back in April, maybe the beginning of [8] May of 2003, correct? Sorry, 2002?  
 [9] A Yeah, correct.  
 [10] Q And now this document is saying, dated June 17, [11] 2003, states that you may have to change his work hours?  
 [12] A That is correct. Based upon. I don't know the [13] exact date I gave him his discipline of twenty-one days. [14] The meeting if I recall correctly, was regarding that [15] because he was still on probation, that I would have to [16] continue to change his hours.  
 [17] And I think that's part of this memo why I [18] discussed it with him. That, even though you've had your [19] disciplinary process, even though it's over, it's not over. [20] That I'm going to continue with the restraining order of the [21] fifty feet, the fifty yards, excuse me, until the [22] probationary period ended.  
 [23] Because I think in his mind, it ended after the [24] Court hearing or whatever. I'm not certain. But I want to [25] make it clear to him that I would still keep him separated

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[1] from Ms. O'Donnell.  
 [2] MS. MCDONALD: Okay. I am going to show you [3] Exhibit 11.  
 [4] (Exhibit No. 11 marked for [5] identification.)  
 [6] THE WITNESS: Okay.  
 [7] BY MS. MCDONALD:  
 [8] Q Do you recognize that document?  
 [9] A Yes I do.  
 [10] Q And what does that, what is that document?  
 [11] A This is a proposal for suspension for thirty days [12] for off duty misconduct.  
 [13] Q Is this a proposal or is this his actual--?  
 [14] A Oh, I'm sorry.  
 [15] Q Discipline?  
 [16] A This is his actual discipline.  
 [17] Q But you just stated initially that it was proposed [18] that he be suspended for thirty days, correct?  
 [19] A Correct.  
 [20] Q And you decided that he, that he would be [21] suspended for twenty-one days?  
 [22] A That is correct.  
 [23] Q Now it says in the third paragraph. You discussed [24] what you considered in determining what discipline would be [25] appropriate.

BSA

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[1] Q Now that document appears to actually be a portion [2] of perhaps a larger document. And there are some numbers in [3] the upper right hand corner.

[4] Do you have any idea what document this may be a [5] part of?

[6] A No.

[7] Q Could it have been a request for some sort of [8] leave?

[9] A I don't know. Because I've never, I don't recall [10] seeing this particular document.

[11] (Exhibit No. 19 marked for [12] identification.)

[13] MS. MCDONALD: Okay. Let me show you this one.

[14] THE WITNESS: Yeah, I - I know this document.

[15] BY MS. MCDONALD:

[16] Q Okay. You received that document?

[17] A Yes.

[18] Q And what is that document?

[19] A It's a medical report of Colleen O'Donnell dated [20] January 31, 2003.

[21] Q And is that from her doctor.

[22] A It's from a doctor, yes.

[23] Q Doctor George Milowe?

[24] A Right.

[25] Q And does this document indicate that Ms.O'Donnell

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[1] suffers from post traumatic stress disorder?

[2] A Yes it does.

[3] Q And does it related to what her symptoms are?

[4] A Yes.

[5] MR. WILMOT: Can we go off the record for a [6] moment?

[7] MS. MCDONALD: Sure.

[8] (Off the record at 1:11 p.m.)

[9] (On the record at 1:13 p.m.)

[10] BY MS. MCDONALD:

[11] Q Okay. I believe the question was does this note [12] indicate to you what Ms.O'Donnell's symptoms, her post [13] traumatic stress disorder were?

[14] A Yes.

[15] Q And does the doctor indicate in this note, any [16] action that may be taken to alleviate Ms.O'Donnell's [17] symptoms?

[18] A Yes.

[19] Q And what does he recommend?

[20] A Well, he recommends that Ms.O'Donnell not be [21] required to work in the same facility as Mr.Reynoso.

[22] Q Did you take any action in response to this [23] letter?

[24] A There were several doctor notes given to me around [25] this period of time, if I remember correctly. I think this

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[1] was the doctor note that I had a staff psychiatrist - I [2] wanted additional information.

[3] I'm not a doctor. I'm not a psychiatrist. What [4] the treatment in my - again, I'm not a psychiatrist, the [5] treatment plan was basically to remove Reynoso or they [6] couldn't work in the same environment. That's the treatment [7] plan.

[8] That didn't sound like a very good treatment plan [9] to me, even though I'm not a doctor or psychiatrist. I had [10] a psychiatrist read one of these doctor's note. I think it [11] was this doctor's note, to explain to me if that is a good [12] treatment plan or not. Or what his thoughts were.

[13] So if this is the doctor's note, I gave it to a [14] staff psychiatrist and the psychiatrist provided me that he [15] needed more information from the doctor which I requested to [16] get permission from Ms.O'Donnell to get that.

[17] Q Okay, and -

[18] A Before I made a decision.

[19] Q A decision on?

[20] A Any decision what to do with Ms.O'Donnell or

[21] Mr.Reynoso, keeping them separated.

[22] Q Okay. Was Ms.O'Donnell requesting some form of [23] leave at this time, in this time period?

[24] A If she was running out of leave without pay, yes.

[25] Q Do you recall whether you granted her

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[1] administrative leave?

[2] A I don't recall if I granted her administrative [3] leave at this particular time. I did grant her [4] administrative leave throughout the situation.

[5] I could, I don't recall. I don't remember. At [6] the same time, I was getting two or three doctor's notes. [7] And I'm - one doctor's note, I granted an extension of [8] administrative leave or leave without pay to get more [9] information back.

[10] Q Okay.

[11] A From her doctor.

[12] Q Now, also around this time, did you at some point, [13] become aware that Ms.O'Donnell had hired an attorney?

[14] A I got a letter, I think, from Mr.Rizzitelli, if I [15] remember correctly, around the same time. Roughly around [16] the same time.

[17] Q Okay. So you, who did you make a request of that [18] they obtain further medical information from Ms.O'Donnell [19] or her doctor?

[20] A If I remember correctly, her supervisor, [21] Mr.Gagnon, made a phone call to Ms.O'Donnell. I can't [22] remember if it was a written request from myself for [23] additional information but I know a phone call was made to [24] get permission to get additional information.

[25] Q And do you know whether an authorization or



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[1] A It was around then. It could have been March. It [2] could have been February when she was placed on AWOL. I [3] know she was placed on AWOL status.

[4] Q Okay.

[5] A I don't know the exact date.

[6] Q You know that Ms.O'Donnell was placed on AWOL [7] status twice?

[8] A Correct, yes.

[9] Q And we're talking about the first incident of [10] AWOL, correct?

[11] Right now?

[12] A Well, honestly, I don't remember the dates.

[13] Q Okay.

[14] A I don't remember the dates. I know she was placed [15] on AWOL status.

[16] MS. MCDONALD: Okay. Let me show you this [17] document.

[18] (Exhibit No. 25 marked for [19] identification.)

[20] (Pause)

[21] THE WITNESS: Okay.

[22] BY MS. MCDONALD:

[23] Q Do you recall that letter?

[24] A Yes.

[25] Q What is the date on that letter?

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[1] A March 24, 2003.

[2] Q And what is this letter?

[3] A Well he's claiming that I'm not responding, that [4] I'm not corresponding responsibly.

[5] Q Who is he?

[6] A Mr.Rizzitelli.

[7] Q Does he again ask you to elaborate on restricting [8] Officer Reynoso to the camp?

[9] A Yes.

[10] MR. WILMOT: Objection to the question.

[11] Q And did you respond to this letter?

[12] A I don't recall.

[13] Q Do you recall ever responding or elaborating on [14] your proposal to restrict Officer Reynoso to the camp?

[15] A No, I never elaborated. Because I gave him my [16] plan of action to put Mr.Reynoso at the camp. I thought it [17] was self-explanatory.

[18] Q Even though you received about five letters asking [19] for elaboration?

[20] MR. WILMOT: Objection. You can answer.

[21] THE WITNESS: Five, I think three of the five [22] letters or four of the five letters I never had permission [23] to talk to him.

[24] BY MS. MCDONALD:

[25] Q Okay. You had permission to talk to Colleen

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[1] though?

[2] A Yeah, I did, I guess.

[3] Q At some point, did you receive notice from either [4] Ms.O'Donnell or her attorney that she wanted to return to [5] work?

[6] A I received either correspondence or the supervisor [7] advised me Colleen wanted to come back to work.

[8] Q Okay. And did you take any action in that regard?

[9] A I don't know if I put anything in writing. I did [10] have the supervisor call Colleen and I mentioned that she [11] would have to have a doctor's note saying she could return [12] to work full duty. And that because of, I think it was [13] around the time that he, Mr.Reynoso was still on probation; [14] I still had to keep them separated.

[15] And I think in one of the doctor's notes, I think [16] it was before or after or during, the doctor even said she [17] should be at a different facility and I had the supervisor, [18] I put it in writing, that I can't remember, but we contacted [19] Colleen, Ms.O'Donnell and offered to place her at the camp.

[20] And she agreed to it verbally.

[21] Q I we talking about in June of 2003 right now?

[22] A I'm, I'm--

[23] Q You're not sure?

[24] A I'm not sure of the timeframe. I do know she [25] didn't want to come back to work. I offered her the camp.

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[1] Verbally she agreed to the camp and then she rescinded.

[2] She did not want to go to the camp.

[3] Q Okay.

[4] A I don't know if it was in June. I don't know if [5] it was in July. The timeframe, I--

[6] Q Okay. Let me just say that for the following [7] questions okay?

[8] You already stated that Ms.O'Donnell was twice [9] AWOL, correct?

[10] A Yes.

[11] Q You testified to that already. And if I suggest [12] to you that her first AWOL was from February 3, 2003 through [13] June 10, 2003, would that comport with your recollection of [14] the event?

[15] Does that time line ring any bells for you?

[16] A Right around that given time, yes, based upon that [17] I was not receiving any medical updates.

[18] Q Okay. But those are the dates?

[19] A I don't know if they were the exact dates

[20] Q Okay.

[21] A But right around that timeframe, you're correct.

[22] Q Okay. And then you received some kind of notice [23] that she wants to return to work?

[24] A Correct.

[25] Q And if I suggest to you that Ms.O'Donnell



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XMAX(29/29)

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[1] Is that correct?  
 [2] A Yes.  
 [3] Q And you assigned her to the camp. Is that right?  
 [4] A That's correct.  
 [5] Q And you state in approximately the middle of the  
 [6] second paragraph, in an effort to facilitate the orderly  
 [7] running of the institution while still allowing Mr. Reynoso [8] to  
 comply with the terms of the order of protection, per [9] your  
 agreement, you will be reassigned as camp officer upon [10] your  
 return.  
 [11] Do you see that?  
 [12] A Yes.  
 [13] Q But what agreement did Ms. O'Donnell make with you  
 [14] that she would be assigned to the camp?  
 [15] A There was a phone call made by her supervisor,  
 [16] Mr. Gagnon asking her or requesting her however how he  
 [17] mentioned, again, I advised him that if she was willing to  
 [18] come back to work, you know, to have Mr. Gagnon call her  
 and [19] see if she would go to camp and at that particular time,  
 she [20] did agree to go to the camp.  
 [21] Q And why did you want to assign her to the camp?  
 [22] A I have, I don't know. It was a different [23] facility. She  
 was out of, well, when I say I don't know, my [24] recollection of  
 this event is Ms. O'Donnell had been out of [25] work for a period  
 of time.

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[1] Mr. Reynoso is on a job inside the institution, if [2] I remember  
 correctly.  
 [3] Q On a job?  
 [4] A Inside.  
 [5] Q A specific assignment, do you mean?  
 [6] A Well, he was working inside. Either the mailroom [7] or he  
 could have been working here at the time. I don't [8] recall where  
 his job assignment was.  
 [9] Fifty yards from this institution is the camp. [10] That's why I  
 offered her the camp.  
 [11] I couldn't offer her the mailroom. This is after [12] the incident  
 in the mailroom, if I'm not mistaken.  
 [13] Q And when Ms. O'Donnell returned to work was she,  
 [14] in fact, placed at the camp?  
 [15] A I don't recall. I don't remember that.  
 [16] Q Okay. I think I already asked you this but do you  
 [17] have the authority to transfer a staff member to another  
 [18] institution?  
 [19] A No.  
 [20] Q Who has the authority to do that?  
 [21] A That would have to go through the Regional [22] Director  
 for approval.  
 [23] Q Okay. Did you put restrictions on Ms. O'Donnell [24] with  
 regards to signing up for overtime?  
 [25] A At the beginning or the end?

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[1] Q At any time.  
 [2] A I put restrictions on both of them to start out [3] with. I  
 wouldn't say restrictions. I would say limitation [4] duties to make  
 sure that fifty yard restraining order was in [5] effect and then later  
 on, they were lifted.  
 [6] Q Why did the restrictions have to be put on both of  
 [7] them?  
 [8] Why not just put the restrictions on Officer [9] Reynoso?  
 [10] A I felt only, it was put on Reynoso, but I felt [11] that both  
 staff members had an obligation to keep that fifty [12] yard  
 distance.  
 [13] Both of them were aware of the restraining order. [14] I felt  
 you know, it was only fair that both of them should [15] abide by  
 that restraining order.  
 [16] It's both responsibility in my mind that if either [17] one came  
 into contact with one another within that fifty [18] yards, they  
 needed to report it.  
 [19] Q So you believe that Colleen was responsible for  
 [20] ensuring that the restraining was enforced?  
 [21] A No. I believe she had an obligation that she was  
 [22] aware of the restraining order. That if she did come in  
 [23] contact, I couldn't guarantee a fifty yard distance no  
 [24] matter if I put them in the mailroom, the camp or the  
 [25] institution.

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[1] I couldn't guarantee. I could just do the best [2] job I could of  
 implementing that restraining order. But I [3] couldn't stop one or  
 the other party from bumping into one [4] another for whatever  
 reason and I felt a staff person, each [5] staff person has an  
 obligation and that they both knew what [6] the restraining order  
 was.  
 [7] So in making decisions on jobs, my job is to make [8] sure  
 everybody is safe and that is what I felt most [9] comfortable with.  
 [10] Q So you could never ensure that the restraining [11] order  
 would be complied with. You could only do the best [12] that you  
 could?  
 [13] A That's correct. I couldn't stop one of them from  
 [14] bumping into one another. If they chose to do that.  
 [15] (Exhibit No. 28 marked for [16] identification.)  
 [17] MS. MCDONALD: Okay. Let me show you this.  
 [18] THE WITNESS: Okay.  
 [19] BY MS. MCDONALD:  
 [20] Q Do you recall that document?  
 [21] A Yes I do.  
 [22] Q What is that document?  
 [23] A The, it was a memo to Colleen and there was a memo  
 [24] to Reynoso. This memo is to Colleen, indicating that the  
 [25] Abuse and Prevention Order against David Reynoso was  
 vacated

BSA

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XMAX(31/31)

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- [1] A Yes.  
 [2] Q Document?  
 [3] A Yes.  
 [4] Q And what is that document?  
 [5] A This is just to notify her that my decision in, to [6] let her know what my decision was in writing and to close [7] out the case.  
 [8] Q And is this her actual letter of reprimand that [9] was placed in her personnel file?  
 [10] A Yeah, uh, I don't know.  
 [11] Q It says that a copy of this letter will remain in [12] her personnel file.  
 [13] A Is it there or not, I don't know. I'm sorry.  
 [14] Q Oh, that's okay. Maybe I wasn't clear. I just [15] wanted to know if this was the actual discipline letter?  
 [16] A This should be the actual discipline letter.  
 [17] Q So there was no suspension, there was simply this [18] letter placed in her file?  
 [19] A That's correct.  
 [20] MS. McDONALD: Okay. I'm done.  
 [21] EXAMINATION BY MR. WILMOT:  
 [22] Q Okay. I've just got a couple of questions. You [23] testified earlier begin as Warden in December of 2002, [24] correct?  
 [25] A No.

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- [1] Q When did you begin as Warden, I'm sorry, of FMC [2] Devens?  
 [3] A December 2000.  
 [4] Q 2000, sorry. Did you actually hire Officer [5] Reynoso?  
 [6] A No.  
 [7] Q He was here before you began as Warden?  
 [8] A Yes.  
 [9] Q Jumping forward to the April 8, 2002 incident. [10] You testified that you changed Officer Reynoso and [11] Ms.O'Donnell's work schedules.  
 [12] Do you remember that testimony?  
 [13] A Yes.  
 [14] Q Can you state again why you changed their [15] schedules?  
 [16] A The reason I changed their schedules was when I [17] received the restraining order and the alleged assault, [18] that's when I decided I had to separate both parties from [19] different job areas or different job sites.  
 [20] Q Do you remember what you changed Ms.O'Donnell's [21] schedule to?  
 [22] A Ms.O'Donnell was working day shift and so I [23] changed her schedule by half an hour.  
 [24] Q Do you know to what times?  
 [25] A I think if I recall correctly she worked from 7:00

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- [1] to 3:30 and I changed Mr.Reynoso's schedule, he was working [2] day shift. I moved him to day shift to night shift. Night [3] shift from 4:00 to 12:00.  
 [4] Q I am going to show you what has been previously [5] identified by Ms.O'Donnell in her deposition. This is [6] Exhibit No. 29.  
 [7] Do you recognize that document?  
 [8] A Yes I do.  
 [9] Q And can you identify what it is.  
 [10] A It's changing of the schedule. And actually I [11] changed it in accordance with this document.  
 [12] She was working Monday through Friday shift, but I [13] did change the time from 6:00 a.m. to 2:30 p.m.  
 [14] Q Okay. So based on this document, it shows that [15] Ms.O'Donnell's schedule was changed to that, 6:00 to, I'm [16] sorry?  
 [17] A 2:30 p.m.  
 [18] Q To 2:30. Okay. And does that document state [19] anything else as to limitations or changes with regard for [20] assignment you made?  
 [21] A Yes it does.  
 [22] Q What else does it say?  
 [23] A It states that if you plan to work outside these [24] hours for any reason, overtime, you must notify your [25] supervisor prior to working.

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- [1] You are not to contact in person or telephonically [2] or associate with David Reynoso, Intelligence Officer at any [3] time.  
 [4] The schedule will remain in effect until further [5] notice.  
 [6] Q Okay. So, anything else in this document that you [7] - any changes that you made to Ms.O'Donnell's assignment.  
 [8] A No.  
 [9] Q Okay. So based on that document, in your memory, [10] the only changes you made to Ms.O'Donnell's assignment here [11] at FMC Devens, was with regard to her schedule and her [12] requirement to notify supervisors that when she wanted to [13] perform overtime work.  
 [14] A That's correct.  
 [15] Q Do you also, did you also limit her to work in the [16] mailroom?  
 [17] A Yes.  
 [18] Q Does that letter state that?  
 [19] A Yes.  
 [20] Q Okay. So the changes you made with regard to [21] Ms.O'Donnell was that one, she had to continue to work in [22] the mailroom, the changes in her time as you said, the half [23] hour change and that she had to notify supervisors when she [24] wanted to work overtime?  
 [25] A That is correct.

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- [1] Q Anything else, any other restrictions or [2] limitations that you - or changes that you placed on [3] Ms.O'Donnell's work here at FMC Devens?
- [4] A No.
- [5] Q Did her pay change in any way?
- [6] A No.
- [7] Q Did her access to certain benefits change in any [8] way?
- [9] A No.
- [10] MR. WILMOT: Okay. Could you mark this? I am [11] going to show you what has been marked as Winn Exhibit No. [12] 33.
- [13] (Exhibit No. 33 marked for [14] identification.)
- [15] BY MR. WILMOT:
- [16] Q Do you recognize that document?
- [17] A Yes.
- [18] Q Can you identify what it is?
- [19] A It's a letter to Mr.Reynoso regarding his [20] schedule and assignment.
- [21] Q And does that document - any changes, if any, [22] that you made with regard to Mr.Reynoso's work here at FMC [23] Devens?
- [24] A Yes.
- [25] Q Can you identify for me what changes were made to

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- [1] Mr.Reynoso's work at FMC Devens that are documented in that [2] Exhibit No. 33?
- [3] A At the time of the incident, he was working day [4] shift. So I changed him from day shift to evening shift.
- [5] Q Until what time?
- [6] A His day shift was, could have been 7:30 to 4:00 or [7] 8:00 to 4:00. His, I don't know what his days off were at [8] the time but I put him on a Monday through Friday schedule [9] from 4:00 p.m. to 12:00 p.m. and also not to arrive at the [10] institution prior to 3:30 p.m.
- [11] He would not be permitted to work an armed post [12] until resolution of the pending criminal charges against [13] him.
- [14] If he planned to work outside these hours of [15] overtime again, he would have to notify his supervisor prior [16] to the shift.
- [17] He wasn't to contact in person or telephonically [18] or associate with Colleen O'Donnell at any time.
- [19] Q Okay. Would it be a fair statement for me to make [20] that other than the limitations on their physical location [21] here at FMC Devens, that the changes that you made with [22] regard to Mr.Reynoso and Ms.O'Donnell's work here at FMC [23] Devens was identical?
- [24] A Yes.
- [25] Q Okay. And just to refer back to Colleen Exhibit

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- [1] No. 29, anywhere in this letter does it say that [2] Ms.O'Donnell was prevented from working overtime?
- [3] A No.
- [4] Q Okay. What were the effective dates of or - [5] well, let me break them up.
- [6] What was the effective date of Ms.O'Donnell's, [7] the changes to Ms.O'Donnell's work here at FMC Devens?
- [8] A April 15, Monday, April 15, 2002.
- [9] Q What was the effective date of the changes to [10] Mr.Reynoso's work here at FMC Devens?
- [11] A Monday, April 15, 2002.
- [12] Q Now the incident occurred on April 8, 2002. [13] Correct?
- [14] A Correct.
- [15] Q Why was there - what happened in between or [16] strike that.
- [17] Why didn't the changes go into effect immediately, [18] I guess, after April 8, 2002 or it looks like there's about [19] a week lapse in time?
- [20] A Both of them were given either annual leave or [21] administrative leave until that particular day of Monday, or [22] their days off coincided with the admin leave or regular [23] leave.
- [24] Therefore, I knew both of them would not come to [25] the institution and the Workplace Violence Committee had met

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- [1] and the investigation had been forwarded.
- [2] The restraining order was received and I knew [3] basically the facts of the case and I knew I had some time [4] to devise a plan to make it safe for both individuals to [5] come into the institution and that was the date that they [6] came back to work.
- [7] Q Okay. So just so I'm clear, is it your testimony [8] that after April 8, 2002, neither Mr.Reynoso or [9] Ms.O'Donnell returned to work that work week?
- [10] A That is correct. That I'm aware of.
- [11] Q And they both returned back to work, returned back [12] to duty on April 15, 2002?
- [13] A That's correct.
- [14] Q When they returned back to work on April 15, 2002, [15] is that the date that these changes to their work began?
- [16] A That is correct.
- [17] Q So when, for example, Mr.Reynoso returned back to [18] work on April 15, 2002, he returned to this new shift?
- [19] A That is correct.
- [20] Q Okay. When you made the decision to change [21] Ms.O'Donnell's work schedule by the half hour as you [22] testified, and to limit her to the mailroom and required her [23] to notify her supervisor if she wanted to work overtime, was [24] her sex or gender a factor in that decision?
- [25] A No.



BSA

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XMAX(33/33)

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[1] Q Okay. Now you gave some testimony before. I'll [2] just see those exhibits there. Thank you.

[3] You gave some testimony before about the Workplace Violence Committee.

[4] Do you remember that testimony?

[5] A Yes.

[6] Q And you said then that you received [8] recommendations from them and that thereafter, you received [9] the Protective Order.

[10] Do you remember that testimony?

[11] A Yes.

[12] Q Let me show you what you have already testified to [13] and has been marked as Exhibit 4 and 5.

[14] Just bring your attention first to Exhibit 5 which [15] you identified earlier as the first recommendations from the [16] Workplace Violence Committee that was convened after this [17] April 8, 2002 incidence.

[18] Do you know when you received this memo?

[19] A This memo?

[20] Q Exhibit 5, yes?

[21] A That morning.

[22] Q That morning. Which morning would that be?

[23] A On April 9, 2002.

[24] Q And the second memo that you identified which has [25] been marked as Exhibit 4 and it's the second memo from the

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[1] Workplace Violence Committee, do you know when you received [2] that memo?

[3] A April 9, 2002.

[4] Q So you received them both on the same day?

[5] A Right. Yes.

[6] Q Now do you know whether or not the Workplace Violence Committee had in its possession or was aware that [8] there was a protective order entered with regard to [9] Ms.O'Donnell and Mr.Reynoso?

[10] A At this time when I received these, no.

[11] Q Okay. So they did not have the restraining order?

[12] A No. But if I had them, they would have received; [13] the committee would have received the restraining order.

[14] Q So they made these recommendations to you not [15] knowing there was a restraining order issued with regard to [16] Ms.O'Donnell and Mr.Reynoso?

[17] A That's correct.

[18] Q Okay. All right. Let me show you that has been [19] previously identified by Ms.O'Donnell and you identified [20] the same document here today. In the O'Donnell deposition, [21] it is Exhibit 27.

[22] And this is the restraining order that you [23] testified to that was issued on April 9, 2002.

[24] Were there, can you identify for me whether or not [25] on that order, the Court, strike that.

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[1] There's some handwritten language here on the [2] order. [3] Do you see that?

[4] A Yes.

[5] Q What does that say?

[6] A You may lawfully attend work but must remain fifty [7] yards from the plaintiff.

[8] Q Okay. So what was your understanding of that [9] statement when you read it?

[10] A That Mr.Reynoso could return to work. But must [11] remain fifty yards from Ms.O'Donnell.

[12] Q when you decided to change the schedules of [13] Ms.O'Donnell and Mr.Reynoso in the way that you did make [14] the changes, did you do that, did you make that decision [15] before or after you received the restraining order from the [16] Court?

[17] A I made that decision when I received that [18] restraining order.

[19] Q Okay. You also testified before as to, you stated [20] before that an investigation of an incident like this would [21] not occur until after adjudication.

[22] Why is that?

[23] A The investigation would be initiated until after [24] the adjudication based upon if the person was found [25] innocent, then we would have to - if he was found guilty

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[1] during the investigation but then found innocent at the [2] Court hearing, we would have to go back and provide back pay [3] and benefits to that employee.

[4] So the Bureau waits until after adjudication and [5] the final disposition in the Court hearing before initiating [6] an investigation.

[7] Q Okay. Now it wasn't until almost the following, [8] the beginning of the next year that the investigation [9] started.

[10] Is that correct?

[11] A That's correct.

[12] Q And you just stated as to why the Bureau waits [13] until after the adjudication.

[14] Was that delay in the beginning of the [15] investigation, did it have anything to do with the fact that [16] Ms.O'Donnell is a woman?

[17] A No.

[18] Q Okay. Now you identified previously some memos [19] that you received from Ms.O'Donnell.

[20] (Pause)

[21] And they're marked as Exhibits 15 and 16. Exhibit [22] 15 is the memo you identified from Ms.O'Donnell's that's [23] dated May 13, 2002 and Exhibit 16 is the memo you identified [24] from Ms.O'Donnell dated June 10, 2002. Both which you said [25] that at some point, you received as you became aware of.



BSA

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XMAX(35/35)

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[1] Q Now there's a blank line there for a signature. [2] Whose signature was that line made for?

[3] A For Ms.O'Donnell.

[4] Q I notice it's blank. Do you know if this letter [5] was communicated to Ms.O'Donnell, delivered to her, sorry?

[6] A I don't know if it was delivered or not. She [7] received this letter.

[8] Q Okay. If I told you that Ms.O'Donnell had [9] testified that after the hearing on January 3, 2003, she did [10] not return back to work.

[11] Would that comport to your memory or refresh your

[12] memory as to what happened at that time?

[13] A On January, was it January 3rd?

[14] Q Mm-hmm.

[15] A I don't know if she reported back to work or not. [16] I don't recall.

[17] Q Okay. I am going to show you what has been

[18] previously identified as Colleen Exhibit No. 40.

[19] It is an exhibit in your deposition today. I just [20] can't find it at this time. But Colleen's Exhibit No. 40 is [21] a - she previously identified as well as I believe you did, [22] a January 8, 2003 note from Dr.George Milowe?

[23] A Okay.

[24] Q Now does that refresh your memory whether or not

[25] Colleen was working or was out of work early January 2003?

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[1] A Well, according to this memo or according to this

[2] doctor's note she was unable to work and it was dated

[3] January 8, 2003. So given that period of time, she was not

[4] able to work. So she couldn't have been at work.

[5] Q Okay. I found the exhibit that I wanted to refer [6] to that was introduced today. The one you just referred to [7] was Colleen Exhibit No. 40 which is the same as your Exhibit [8] No. 27.

[9] You also gave testimony as to Exhibit 19. There [10] was some confusion as to what was the first doctor's note [11] that you received concerning Ms.O'Donnell.

[12] On Exhibit No. 27, can you identify what the date [13] is of that note?

[14] A January 8, 2003.

[15] Q And what is the date on Exhibit No. 19?

[16] A January 31, 2003.

[17] Q Okay. Does that refresh your memory as to which

[18] note you received first?

[19] A I received this one first. The Exhibit 27 first.

[20] Q Okay. And what did you with Exhibit No. 27 when

[21] she received it?

[22] A What this note was given, if I'm not mistaken, to [23] a staff psychiatrist on January 8, 2003 for interpretation.

[24] Q And who is that psychiatrist that you gave it to?

[25] A Dr.Fletcher.

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[1] Q Do you know if he responded to Colleen with [2] regards to that note?

[3] A Did he respond or did I?

[4] Q Did you or anyone at your direction respond to

[5] Colleen with regards to that note dated January 8, 2003?

[6] A We responded requesting additional medical

[7] information.

[8] Q When you say we, can you identify who?

[9] A I can't remember.

[10] Q Okay. I am going to show you what is marked as

[11] Colleen Exhibit No. 41. I will present to you that Colleen

[12] identified that in her deposition.

[13] It's a memo from Steve Gagnon to her dated January [14] 9, 2003.

[15] A That's correct.

[16] Q Can you read that or have you read it?

[17] A I've read it.

[18] Q Okay. And that memo refers to a phone

[19] conversation with Ms.O'Donnell on January 9, 2003.

[20] A I, actually, well, Steve explained to her that I [21] wanted more written, I wanted a release from her doctor so [22] our doctor at the institution could speak to her doctor [23] regarding the medical documentation received which was the [24] January 8th one.

[25] The reason I wanted that, the reason was to

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[1] adequately address her, any accommodation or whatever that

[2] she requested.

[3] Q Okay. And what time does Steve Gagnon say that he

[4] spoke with Colleen requesting that additional information?

[5] A Approximately 8:45 a.m.

[6] Q Okay. Do you know what time you received the note

[7] from Ms.O'Donnell's doctor which was dated January 8, 2003?

[8] A I never received any note.

[9] Q The note that you identified as Exhibit 27?

[10] A Oh, when did I receive this note? January 8, [11] 2003.

[12] Q Do you remember what time of day you received

[13] that?

[14] A No, I don't recall the time of day.

[15] Q At the top of there, there is a fax line. Do you [16] see that?

[17] A Yes.

[18] Q What is the time of the fax?

[19] A 18:20.

[20] Q What would that be in -

[21] A 18:20 has got to be around 6:20, is that right?

[22] Military time.

[23] Q 18:20 will be military time, right?

[24] MS. MCDONALD: Aren't you supposed to know that?

[25] THE WITNESS: This isn't military. Let's see.

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[1] initially. That I gave her initially.  
 [2] Q Which was what?  
 [3] A Working in the mailroom and Mr. Reynoso would have  
 [4] been working in an area in the institution or vis-a-versa. [5] It  
 could have changed but they both would have been working [6] in  
 the same facility.  
 [7] Q If Ms.- you said Ms.O'Donnell would be in the  
 [8] mailroom. What times would she have been working?  
 [9] A She would have been working 6:00 to 2:30.  
 [10] Q And where would Mr.Reynoso have been working  
 [11] January 31, 2003?  
 [12] A He would have been working in this facility on  
 [13] evening watch.  
 [14] Q When you say this facility, what do you mean?  
 [15] A The inside of the institution, away from the [16] mailroom.  
 [17] Q What would his times have been?  
 [18] A 4:00 to 12:00.  
 [19] Q Okay. So if Ms.O'Donnell was working January 31,  
 [20] 2003, under the time and the locations which you just  
 [21] specified, would you agree with me that she would not have  
 [22] been working at the same facility at the same time as  
 [23] Mr.Reynoso?  
 [24] A I would agree with that.  
 [25] Q Okay.

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[1] (Pause)  
 [2] Now you gave some testimony as to - these letters [3] here.  
 Winn Exhibit 21 is a letter from Mr.Rizzitelli to [4] you dated  
 February 10, 2003.  
 [5] Winn Exhibit 22, is the same letter but there's [6] the watermark  
 or whatever you want to call it stating that [7] no response  
 received, resent February 18, 2003.  
 [8] And the last Winn Exhibit 23, same letter again, [9] with the  
 exception of the watermark stating no response [10] received,  
 resent March 3, 2003.  
 [11] Why didn't you respond to, well strike that. [12] Between the  
 time of February 10, 2003 which is Exhibit 21 [13] and Exhibit 22  
 which states that it was resent February 18, [14] why didn't you  
 respond to Mr.Rizzitelli's February 10, 2003 [15] letter in that  
 timeframe?  
 [16] A Because I didn't have, the reason I didn't respond  
 [17] was because I didn't have written permission from Colleen to  
 [18] pass to, to provide information to Rizzitelli.  
 [19] Q Okay. And then in the last letter, Exhibit 23, [20] between  
 the timeframe of February 18, 2003, the date of [21] Exhibit 22,  
 why didn't you respond to Mr.Rizzitelli's in [22] that timeframe?  
 [23] A I had yet to receive permission to provide [24] Mr.Rizzitelli  
 information regarding Ms.O'Donnell.  
 [25] Q Do you remember when you received authorization

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[1] from Ms.O'Donnell that Mr.Rizzitelli was indeed her  
 [2] counsel?  
 [3] A I don't remember the exact date. It was some time [4] in  
 March.  
 [5] Q I am going to show you what was previously [6] identified  
 as Colleen Exhibit 53. I will represent to you [7] that Ms.O'Donnell  
 identified that document as the letter in [8] which she identifies  
 Mr.Rizzitelli as her lawyer.  
 [9] What is the date of that document?  
 [10] A March 4, 2003.  
 [11] Q Okay. And can you just repeat again the date of [12] the  
 last letter in the sequence that we just went through in [13] the last  
 three letters when that was sent?  
 [14] A March 10, excuse me, February 10.  
 [15] Q No, it would be the watermark date?  
 [16] A March 3, 2003.  
 [17] Q Okay. So you received the written notification [18] from  
 Ms.O'Donnell after Mr.Rizzitelli sent this last [19] letter which is  
 dated March 3, 2003?  
 [20] A That is correct.  
 [21] Q And once you received this letter from [22] Ms.O'Donnell  
 which is Exhibit 53, did you then respond to [23] Mr.Rizzitelli?  
 [24] A Yes I did.  
 [25] Q Okay. I'm just referring your attention back to

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[1] Exhibit 18. The document that you stated earlier that you  
 [2] had not seen before.  
 [3] I am going to show you what was marked as Exhibit [4] 48 in  
 Ms.O'Donnell's deposition.  
 [5] Do you recognize that document or can you identify [6] what it  
 is?  
 [7] A It's a Request for Voluntary Leave Transfer.  
 [8] Q If you flip to the second page of that document. [9] And  
 can you compare that page to what was marked as Exhibit [10] 18  
 in your deposition today.  
 [11] A They're the exact same.  
 [12] Q So Exhibit 18 of your deposition today is the [13] second  
 page of Colleen Exhibit No. 48?  
 [14] A That is correct.  
 [15] Q Okay. And you said that Exhibit No. 48 of [16] Colleen's  
 deposition is a Request for Voluntary Leave [17] Transfer.  
 [18] What involvement, if any, do you have in the [19] Voluntary  
 Leave Transfer application process or decision [20] with regard to  
 those applications?  
 [21] A That's an independent committee that gathers to  
 [22] look at documents and approve or deny any kind of leave  
 [23] transfer program.  
 [24] I don't have any input on that.  
 [25] Q Okay. Are you aware that the Voluntary Leave